

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

In re:)	Chapter 11
)	
EASTERN LIVESTOCK CO., LLC, et al., ¹)	Case No. 10-93904-BHL-11
)	
Debtors.)	JOINTLY ADMINISTERED

**MOTION TO APPROVE COMPROMISE AND SETTLEMENT
WITH PEOPLES BANK AND TRUST COMPANY OF PICKETT COUNTY**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for Eastern Livestock Co., LLC ("Debtor"), by counsel, hereby files this motion (the "Settlement Motion") requesting the Court's approval of a compromise and settlement of claims between the Trustee (as one party to the dispute) and the Peoples Bank and Trust Company of Pickett County ("Peoples") (as the other party to the dispute). In support of this Settlement Motion, the Trustee states as follows:

Introduction and Background

1. Peoples filed the *Motion for Relief From Automatic Stay and Abandonment of Property* [Docket No. 300] (as modified by Dock. No. 317, the "Stay Relief Motion") on February 28, 2011 seeking entry of an order under 11 U.S.C. § 362 terminating the automatic stay and abandoning from Debtor's bankruptcy estate certain real estate owned by Debtor in Harrison County, Indiana (as more particularly described in the Stay Relief Motion, the "Property"). Peoples alleges that Debtor granted Peoples Bank a mortgage against the Real Estate (the "Mortgage") on September 30, 2008 as security for a \$1,500,000 loan that Peoples made to Thomas and Patsy Gibson (the "Gibsons").

¹ The Debtor entities are Eastern Livestock Co., LLC and Okie Farms, L.L.C.

2. The Trustee filed objections to the Stay Relief Motion [Docket Nos. 334, 454 and 867] wherein the Trustee asserted that the Mortgage on the Property is avoidable pursuant to 11 U.S.C. § 544(b)(1) and the applicable provisions of the Indiana Code.

3. On November 30, 2011, the Trustee filed his Amended Complaint to avoid Mortgage pursuant to 11 U.S.C. §544 (b)(1) and I.C. §32-18-2-14, 15 and 17 (the "Adversary Proceeding").

4. Peoples duly filed its Answer in the Adversary Proceeding on December 21, 2011, wherein Peoples alleged that Debtor did, in fact, give "reasonably equivalent value" for the Mortgage of the Property, and further that Debtor was not insolvent on the day of the transfer

5. The Parties, in an effort to avoid the significant cost and expense of further litigating the disputes and claims set forth above, desire to settle their disputes upon the terms and conditions set forth in the Settlement Agreement attached hereto as Exhibit A ("Settlement Agreement").

The Settlement

6. Trustee requests that the Court approve the Settlement Agreement. Under the Settlement Agreement, the Trustee shall file a motion seeking Court authority to sell the Property free and clear of all liens, claims, interests and encumbrances pursuant to 11 U.S.C. §363 at a public auction to be conducted on Saturday, March 3, 2012 or as soon thereafter as practicable. Subject to the authority and orders of the Court, the parties agree that the Property may be sold as a single parcel or in separate tracts as necessary and in the sole discretion of Peoples to maximize the sale proceeds.

7. The Trustee shall file a motion seeking Court authorization to employ Lee J. Amonett and Ken Byrd, Realty & Auction, Inc. (collectively the "Auctioneer") as professionals for the purpose of conducting the public auction provided for in paragraph six (6).

8. As compensation for his services, the Auctioneer will receive a five percent (5%) commission from the public auction of the Property which shall be paid from the gross sale proceeds. Furthermore, the Auctioneer will receive a five percent (5%) buyer's premium to be collected from the buyer of the Property following the sale. The Auctioneer will pay all advertising expenses, cooperating commissions, internet commissions, etc... out of his commission and buyer's premium with none of these expenses to be incurred by Debtor's estate.

9. The gross sale proceeds realized from the sale of the Property will be disbursed as follows: (a) first to satisfy the five percent (5%) commission of the Auctioneer; then (b) to pay all real estate taxes and assessments outstanding and unpaid at the date of sale. The remaining sale proceeds ("Net Sale Proceeds") shall be divided between the Trustee and Peoples as follows: (a) the Trustee shall receive twenty percent (20%) of the Net Sale Proceeds for the benefit of Debtor's estate and (b) Peoples shall receive eighty percent (80%) of the Net Sale Proceeds.

10. Pursuant to 11 U.S.C. §363(k), Peoples shall be entitled to "credit bid" at the auction up to the amount of its claim in the case of *In re Thomas P. Gibson and Patsy M. Gibson*, U.S.B.C. S.D.IN. Case No. 10-93687-BHL-7 up to the amount of \$1,508,297.89 and subject to credit for proceeds realized by Peoples from the sale of any other properties or collateral securing the Gibsons' obligations to Peoples, provided that should Peoples be the successful bidder, then it shall pay the direct expenses of the sale and would further pay the Trustee twenty percent (20%) of the Net Sale Proceeds.

11. Each of the Parties shall bear his or its own attorneys' fees, and other costs incurred (including, without limitation, statutory trustee fees of the Trustee) in connection with the sale of the Property (excluding Auctioneer fees and real estate taxes which shall be paid in

accordance with paragraph nine (9) above). The Trustee shall not assess, charge, or collect a commission, statutory fee, or other administrative expense from the eighty percent (80%) of the Net Sale Proceeds to be received by Peoples as provided for in paragraph nine (9).

12. The parties shall release any and all claims against one another that have accrued as of the effective date of the Settlement Agreement (the "Released Claims"). The Released Claims specifically include any and all claims asserted or assertable by Peoples against Debtor's bankruptcy estate.

Basis for Relief

13. Pursuant to Federal Rule of Bankruptcy Procedure 9019, this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

14. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found., 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

15. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. The Settlement Agreement is the result of arms-length negotiations after several months of research and litigation. The alternative to the settlement is continued litigation of the claims between the Trustee and Peoples Bank, and the possibility of an outcome that would result in a smaller recovery to the estate.

16. The Trustee therefore believes that the proposed settlement is fair and equitable and in the sound exercise of his business judgment.

17. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

Respectfully submitted,

FAEGRE BAKER DANIELS, LLP

By: /s/ Dustin R. DeNeal

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CERTIFICATE OF SERVICE

I hereby certify that on January 30, 2012, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on January 30, 2012, a copy of the foregoing pleading was served via electronic mail transmission on the following:

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